

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

3 **ROSA J. LOPEZ DE JESUS,**

4 Plaintiff,

5 v.

CIVIL NO. 04-2129 (JAF)

6
7 **COMMISSIONER OF SOCIAL**
8 **SECURITY,**

9 Defendant.

10 **REPORT AND RECOMMENDATION**

11 The case at bar was brought before the Court pursuant to the Social Security Act's¹ ("Act")
12 appeals provision, which expressly authorizes any individual who requests disability benefits from
13 the Commissioner of Social Security, but whose request has been denied, to seek review of said
14 decision pursuant to 42 U.S.C. § 405 (g). After reviewing the transcript of the record and the parties
15 memoranda of law (Docket Nos. 11 and 13), the Court finds that denial of a period of disability or
16 disability insurance benefits was supported by substantial evidence, for which the Commissioner's
17 ruling is **AFFIRMED**.

18 **I. STANDARD OF REVIEW**

19 Judicial review of the Commissioner of Social Security's denial of disability benefits is
20 limited in scope. The Court's only tasks are to ensure that the final decision is supported by
21 substantial evidence and whether the correct legal standard was used. 42 U.S.C. § 405 (g); See
22 Seavey v. Barnhart, 276 F. 3d 1, 9 (1ST Cir. 2001). The term "substantial evidence" means "such
23 relevant evidence as a reasonable mind might accept as adequate to support a conclusion."
24 Richardson v. Perales, 402 U.S. 389, 401 (1971). If the Court finds the determination to be supported
25 by substantial evidence of record, the Commissioner's findings must be upheld, even if the Court
26 disagrees with them or, had found otherwise under a *de novo* standard of review. See Lizotte v.
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¹42 U.S.C. § 405 *et seq.*

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3 Secretary of Health and Human Servs., 654 F. 2d 127, 128 (1ST Cir. 1981). However, the
4 Commissioner's findings are not conclusive "when derived by ignoring evidence, misapplying the
5 law, or judging matters entrusted to experts." Nguyen v. Chater, 172 F.3d 31, 35 (1st Cir. 1999).

6 **II. FINDINGS OF THE ADMINISTRATIVE LAW JUDGE**

7 After evaluating the evidence of record, the Administrative Law Judge ("ALJ") made the
8 following findings in his decision to deny plaintiff a period of disability and disability benefits:

- 9 1. The claimant meets all of the the non-disability requirements for Disabled Widow's
10 Insurance Benefits set forth in Section 202(e) of the Social Security Act (with the
11 exceptions noted in 20 C.F.R. § 404.335(e)). The claimant's prescribed period begins
12 September 27, 1987, and ended September 30, 1994.
- 13 2. The claimant has not engaged in substantial gainful activity since the alleged onset
14 of disability.
- 15 3. The claimant has an impairment or a combination of impairments considered
16 "severe" based on the requirements in the Regulations 20 C.F.R. § 404.1520 (b).
- 17 4. These medically determinable impairments do not meet or medically equal one of the
18 listed impairments in Appendix 1, Subpart P, of Regulation No. 4.
- 19 5. The claimant's allegations regarding her limitations are not totally credible for the
20 reasons set forth in the body of the decision.
- 21 6. The [ALJ] has carefully considered all of the medical opinions in the record
22 regarding the severity of the claimant's impairments (20 C.F.R. § 404.1527).
- 23 7. The claimant retains the residual functional capacity to perform a full range of
24 medium work, but it should be performed in a clean work environment.
- 25 8. The claimant has no past relevant work (20 C.F.R. § 404.1565).
- 26 9. The claimant was a "younger individual." (20 C.F.R. § 404.1563).
- 27 10. The claimant has a "limited education." (20 C.F.R. § 404.1564).
- 28 11. The claimant had the residual functional capacity to perform substantially all of the
full range of medium work. (20 C.F.R. § 404.1567).

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2 12. Based on an exertional capacity for medium work, and the claimant's age, education,
3 and lack of work experience, at the pertinent period, Medical-Vocational Rule
4 203.25, Appendix 2, Subpart P, Regulations No. 4 would direct a conclusion of "not
5 disabled."

6 13. The claimant's capacity for medium work was substantially intact and was not
7 compromised by any non-exertional limitations. Accordingly, using the above-cited
8 rule(s) as a framework for decision-making, the claimant is not disabled.

9 14. The claimant was not under a "disability," as defined in the Social Security Act, at
10 any time through the date she last met the insured status. (20 C.F.R. § 404.1520 (f)).

11 **III. PLAINTIFF'S ARGUMENT ON ADMINISTRATIVE REVIEW**

12 Plaintiff Rosa J. López-De Jesús ("López-De Jesús") alleges on administrative review that
13 the Commissioner's ruling was not supported by substantial evidence, as called for by the Act. 42
14 U.S.C. § 405 (g). *Complaint* (Docket No. 1). Specifically, López-De Jesús claims that the ALJ did
15 not properly consider her complaint of debilitating pain. In addition, the claimant alleges that the
16 ALJ's use of the Grid was uncalled for in light of the evidence of non-exertional limitations
17 contained in the administrative record. *Plaintiff's Memorandum of Law*, p. 6-7 (Docket No. 13).

18 **IV. LEGAL ANALYSIS**

19 As stated above, the standard of review of the commissioner's decision is whether the
20 determination made is supported by substantial evidence. 42 U.S.C. §§ 405(g), 1383(c)(3). In
21 reviewing the record for substantial evidence, the Court is guided by the mandate that "issues of
22 credibility and the drawing of permissible inference from evidentiary facts are the prime
23 responsibility of the Secretary." *Richardson*, 402 U.S. at 399. The resolution of conflicts in the
24 evidence and the determination of the ultimate question of disability is for the Secretary, not for the
25 doctors or for the Courts. *Id.*; see also *Lizotte v. Secretary of Health and Human Services*, 654 F.2d
26 127, 128 (1st Cir. 1981); *Rodríguez*, 647 F. 2d at 222; *Alvarado v. Weinberger*, 511 F.2d 1046, 1049
27 (1st Cir. 1975) (per curiam).

28 The Court will first address López-De Jesús' claim that the ALJ improperly applied the Grid,

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2 in light of the non-exertional limitations allegedly evinced by the administrative record. *Plaintiff's*
3 *Memorandum*, p. 10 (Docket No. 13). López-De Jesús claims that the proper course of action called
4 for the ALJ's procurement of a Vocational Expert to opine on whether, considering such alleged
5 limitations, their exist jobs in the national and local economy which suit her. *Id.*

6 Where a claimant has a non-exertional impairment which significantly affects the claimant's
7 ability to perform the full range of work he/she is otherwise capable of performing, the
8 Commissioner's burden is to show, usually through the testimony of a vocational expert, the
9 availability of jobs in the national economy which are viable considering the claimant's condition.
10 *Ortiz v. S.H.H.S.*, 890 F. 2d. 520, 524 (1ST Cir. 1989). However, in the case at bar, the record is
11 barren of any such non-exertional limitations during the relevant time period. In fact, the claimant
12 has failed to even specify in her brief which limitations she claims warranted the use of a vocational
13 expert. Moreover, the evidence of record appears to establish quite the contrary. To that effect, the
14 only residual functional capacity assessment ("RFC") on record, which the claimant has not objected
15 to, clearly states that López-De Jesús has no postural, manipulative, visual, communicative, or
16 environmental limitations. (Tr. 140-42). The claimant was also found capable of occasionally lifting
17 fifty pounds, frequently lifting twenty-five pounds, standing and sitting for six hours in an eight hour
18 work day, and pushing and pulling without limitation. (Tr. 139).

19 Additionally, the brunt of the evidence on record of her alleged pain is from medical reports
20 outside of her coverage period for Disabled Widow's Insurance Benefits, which the ALJ stated ran
21 through September 30, 1994. (Tr. 24). The only evidence of such pain within the prescribed period
22 that the Court can find are two reports from September 1993, which state that she complained of
23 pain. (Tr. 174, 180). However, no objective medical findings are included to support her subjective
24 claims, which are, in and of themselves, insufficient to warrant disability benefits. *See Bianchi v.*
25 *S.H.H.S.*, 764 F. 2d. 44, 45 (1ST Cir. 1985).

26 **V. CONCLUSION**

27 After reviewing the appellant's administrative record, the ALJ's findings, the accompanying
28 memorandum of law, and the applicable law, the Court finds that the denial of a period of disability

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2 or disability benefits was supported by substantial evidence. Richardson v. Perales, 402 U.S. 389
3 (1971). Consequently, the Court hereby **RECOMMENDS** that the Commissioner's ruling be
4 **AFFIRMED**.

5 Under the provisions of 28 U.S.C. § 636 and Rule 72 (d), Local Rules, District of Puerto
6 Rico, any party who objects to this report and recommendation must file a written objection thereto
7 with the Clerk of the Court within ten (10) days of the party's receipt of this report and
8 recommendation. The written objections must specifically identify the portion of the
9 recommendation, or report to which objection is made and the basis for such objections. Failure
10 to comply with this rule precludes further appellate review. See Thomas v. Arn, 474 U.S. 140, 155
11 (1985), reh'g denied, 474 U.S. 1111 (1986); Davet v. Maccorone, 973 F. 2d 22, 30/31 (1st Cir.
12 1992).

13 **IT IS SO RECOMMENDED**

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15 **Date: August 2, 2005**

S/ Gustavo A. Gelpí
GUSTAVO A. GELPI
U.S. Magistrate Judge